Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

MICHAEL RAPOPORT and GERALD V. SCOTTI,

Petitioners,

v.

STATE FARM MUTUAL INSURANCE COMPANY; FARMERS INSURANCE GROUP; and, ALLSTATE INSURANCE COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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43 pp

QUESTION PRESENTED FOR REVIEW

Did the lower courts improperly disregard the mandatory requirements of 28 U.S.C. § 636(c), when a magistrate judge to whom the parties had not consented to have hear the matter, and who was not specially assigned to hear the matter by a district court judge, was permitted to preside over an evidentiary hearing, and decide a Rule 60(b) Motion to Vacate the judgment, over the objections of the petitioners?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings presently before this Honorable Court are set forth in the caption of this case. The United States of America was a party to original underlying proceeding through 1997, but then filed a motion to interplead certain funds, and has not been a party to the proceedings since 1998, and was not a party to the appeal to the United States Court of Appeal for the Fifth Circuit.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

MICHAEL RAPOPORT and GERALD V. SCOTTI,

Petitioners,

v.

STATE FARM MUTUAL INSURANCE COMPANY;
FARMERS INSURANCE GROUP; and,
ALLSTATE INSURANCE COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Petitioners, MICHAEL RAPOPORT and GERALD V. SCOTTI, respectfully petition for a writ of certiorari to review the judgement of the United States Court of Appeals for the Fifth Circuit summarily dismissing the appeal in this case.

I

OPINIONS BELOW

The order of the United States Court of Appeals for the Fifth Circuit summarily dismissing the appeal of petitioner Rapoport from a denial of his motion to vacate a civil judgement pursuant to Rule 60(b), Federal Rules of Civil Procedure, and the order imposing sanctions on petitioner Scotti, the attorney for petitioner Rapoport, was filed on September 12, 2000, and is unreported. [A copy is reproduced as Exhibit A to the Appendix.] In that same order filed on September 12, 2000, the Fifth Circuit denied a motion by respondents State Farm and Farmer's Insurance for an award of sanctions. [Id.] The order of United States Magistrate Judge Paul D. Stickney denying the motion to vacate judgment filed by petitioner Rapoport, which included an order imposing sanctions on his attorney, petitioner Scotti, was filed on May 18, 1999. [A copy is reproduced as Exhibit B to the Appendix.]

The Notice of Appeal from those orders was filed by both petitioner Rapoport and petitioner Scotti on June 15, 1999. [A copy is reproduced as Exhibit C to the Appendix.] The original order of the district court referring the underlying case to United States Magistrate Judge John B. Tolle was filed on June 19, 1997. [A copy is reproduced as Exhibit D to the Appendix.]

II

JURISDICTION

The court of appeals issued its final order summarily dismissing the appeal on September 12, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and Rule 13.1, Supreme Court Rules.

III

RELEVANT STATUTORY PROVISIONS

Title 28, United States Code, Section 636(c)(1), provides in pertinent part:

(1) Upon the consent of the parties, a full-time United

States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves...."

IV

STATEMENT OF THE CASE

A. JURISDICTION OF THE DISTRICT COURT

1. Original Proceeding.

This action was originally filed by the United States of America on December 3, 1996, as an in rem civil forfeiture proceeding against $263,137.00 pursuant to 18 U.S.C. § 981(a)(1)(C). After claims and answers were filed by petitioner MICHAEL RAPOPORT and the three respondent insurance companies, STATE FARM MUTUAL INSURANCE COMPANY, FARMERS INSURANCE GROUP and

ALLSTATE INSURANCE COMPANY, (hereinafter referred to collectively as "Respondents" or separately as "State Farm," "Farmers" or "Allstate"), the United States filed an unopposed motion to interplead the funds. That motion was granted by the district court on April 15, 1997, thus converting the case into an interpleader action over which the district court maintained jurisdiction pursuant to 28 United States Code § 1335.

On June 19, 1997, the district court entered an order referring the mater specifically to United States Magistrate Judge John B. Tolle pursuant to 28 U.S.C. § 636(c). Magistrate Judge Tolle entered summary judgment in favor of Respondents on January 9, 1998. The funds were thereafter disbursed to the Respondents.

Petitioner Rapoport subsequently filed a timely pro se notice of appeal, however, that appeal was subsequently dismissed on December 4, 1998, because the opening briefs had been filed approximately seven days late.

2. **Motion to Vacate Pursuant to Rule 60(b).**

After his direct appeal was dismissed because the brief was filed approximately one week late, and during the pendency of a motion for reconsideration in the Fifth Circuit, petitioner Scotti filed a motion to vacate pursuant to Rule 60(b) Federal Rules of Civil Procedure, on behalf of petitioner Rapoport, raising only the issue of whether consent had been given to reference of the case to Magistrate Judge Tolle. In that motion petitioners explicitly objected to the motion being heard by a magistrate judge.

On February 25, 1999, United States Magistrate Judge Paul D. Stickney, to whom the parties had never consented, and to whom a referral had never been made, conducted a hearing on petitioner Rapoport's Rule 60(b) motion, in which he heard evidence regarding whether consent to the reference to Magistrate Judge Tolle had been given in June 1997. The hearing was conducted over the objections of petitioner

Rapoport and petitioner Scotti, whom asserted that Magistrate Judge Stickney lacked jurisdiction to hear the matter. At the conclusion of the hearing, Magistrate Judge Stickney invited respondent Allstate to submit an affidavit as to its costs for attorney's fees in opposing the motion. Thereafter, Magistrate Judge Stickney issued an order on May 18, 1999, denying petitioner Rapoport's motion to vacate and awarding sanctions to respondent Allstate againt petitioner Scotti personally.

Petitioners have consistently asserted that Magistrate Judge Stickney lacked jurisdiction to preside over the hearing on the motion to vacate, and to issue the post-judgment orders in this case, and petitioners are now asking this Honorable Court to grant certiorari and thereafter vacate those orders.

B. FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTION PRESENTED.

1. Original Proceeding and Appeal.

In the original underlying proceeding in the district court

petitioner Rapoport was represented by attorney James A. Rolfe. The parties to the proceeding appeared to have filed a Joint Status Report, which included an agreement to consent to reference of the case specifically to United States Magistrate Judge John B. Tolle. However, the Joint Status Report filed with the district court, which had a number of separately executed signature pages, did not contain a page bearing the signature of Mr. Rolfe, then counsel for petitioner Rapoport. Despite this lack of written consent of all the parties being in the file, Senior United States District Judge Barefoot Sanders issued the following order:

> " On June 19, 1997, the remaining parties filed their Joint Status Report, as required by the Court's May 30, 1997 Order. It appears from such Status Report that the parties have consented in writing to trial in this case before a United States Magistrate Judge in accordance with 28 U.S.C. § 636(c).

> " It is therefore ORDERED by the Court that this case be, and it is hereby, REASSIGNED to United States Magistrate Judge John B. Tolle for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c), with any appeal therefrom to be taken to the United States Court of Appeals for the Fifth Circuit in accordance with 28 U.S.C. § 636(c)(3)."

[See Exhibit D to Appendix.]

After Magistrate Judge Tolle entered an order granting summary judgment in favor of Respondents, petitioner Rapoport filed a number of pro se documents, including an objection to the jurisdiction of Magistrate Judge Tolle, wherein petitioner Rapoport asserted that he had never consented to the reference. This pro se, post-judgment, objection by petitioner Rapoport was the first time the issue of Magistrate Judge Tolle's jurisdiction had been raised. The objection in petitioner

Rapoport's pro se pleading was never addressed by the district court.

Petitioner Rapoport subsequently filed a timely pro se notice of appeal to the United States Court of Appeals for the Fifth Circuit. However, on December 4, 1998, the Fifth Circuit granted a motion to dismiss the appeal filed by respondents State Farm and Farmers based upon the fact that petitioner Rapoport, by then represented by petitioner Scotti, had submitted his opening brief approximately seven days late. That untimely brief had raised several issues, including a challenge to the jurisdiction of Magistrate Judge Tolle, where Mr. Scotti had discovered that the record on appeal prepared by the district court clerk did not contain the written consent of petitioner Rapoport, or his former attorney, Mr. Rolfe, to reference to Magistrate Judge Tolle. This issue had not been raised in, nor had it been decided by, the district court, as it had been discovered by Mr. Scotti after he had been retained for the

appeal.

Petitioner filed a timely motion for reconsideration of the order dismissing the appeal, which was denied by the Fifth Circuit on January 27, 1999. The dismissal order issued by the Fifth Circuit was not a decision on the merits, but rather, based solely on a procedural default by petitioner.

2. **Motion to Vacate Pursuant to Rule 60(b).**

On January 12, 1999,[1] while petitioner Rapoport's motion for reconsideration was pending in the Fifth Circuit, and in order to preserve petitioner Rapoport's right to have the jurisdictional question adjudicated on the merits, petitioner Scotti filed a Motion to Vacate pursuant to Rule 60(b),

---

1/ The original judgment has been entered on January 12, 1998, and therefore the motion was timely. The May 18, 1999, decision of Magistrate Judge Stickney erroneously focused on the January 9, 1998, filing date of the summary judgment orders, rather than the January 12, 1998, entry date of those orders, in holding that the Rule 60(b) motion was untimely. It clearly was not untimely under the express provisions of Rule 60(b).

Federal Rules of Civil Procedure, asserting that there had been no written consent filed so as to permit reference of the case to Magistrate Judge Tolle. Petitioner pointed out that the record before this district court did not contain any evidence of written consent to the reference to Magistrate Judge Tolle, as there was no signature page bearing the signature of petitioner Rapoport or his attorney. This was the only issue raised in the Rule 60(b), as it was an issue that had never been ruled upon by the district court, nor had the merits of the issue been ruled upon by the Fifth Circuit.

In the Motion to Vacate, petitioner Rapoport, through his attorney Scotti, expressly objected to the Rule 60(b) motion being considered by a magistrate judge, stating:

> **" Claimant Rapoport also expressly indicates that he does not consent to this motion being heard by a Magistrate Judge."**

[District Court Clerk's Record, at page 265.]

Despite this explicit objection by petitioner Rapoport, and despite the clear Fifth Circuit precedent in Parks v. Collins, 761 F.2d 1101 (5th Cir. 1985) and Mendes Junior Int'l Co. v. M/V Sokai Maru, 978 F.2d 920, 924 (5th Cir. 1992), Magistrate Judge Stickney, to whom the parties had never given consent to preside over the case, and to whom the case had not been referred by a district judge,[2] thereafter held an evidentiary hearing, denied petitioner Rapoport's Motion to Vacate, and issued an order awarding sanctions against petitioner Scotti for filing and prosecuting the motion. Petitioners filed a timely notice of appeal on June 15, 1999 [Exhibit D], and Magistrate Judge Stickney subsequently stayed enforcement of the sanctions order pending appeal.

2/ Magistrate Judge Tolle had retired and Magistrate Judge Stickney apparently assumed his caseload.

C. REASONS FOR GRANTING THE WRIT

1. The Fifth Circuit Has Disregarded Its Own Precedent, And The Precedent Of This Court, Holding That Magistrate Judges May Only Hear And Decide Matters Specially Referred To Them With The Consent Of All The Parties.

In Gomez v. United States, 490 U.S. 858 (1989), this Court noted:

> " Through gradual congressional enlargement of magistrates' jurisdiction, the Federal Magistrates Act now expressly authorizes magistrates to preside at jury trials of all civil disputes and criminal misdemeanors, subject to special assignment, consent of the parties, and judicial review. The Act further details magistrates' functions regarding pretrial and post-trial matters, specifying two levels of

review depending on the scope and significance of the magistrate's decision. The district court retains the power to assign to magistrates unspecified 'additional duties,' subject only to conditions or review that the court may choose to impose. (emphasis added)"

Id., at pages 871-872. This Court thereafter held that a magistrate judge lacked jurisdiction to preside over a matter to which the parties had not specifically consented.

The United States Court of Appeals for the Fifth Circuit has interpreted the Act to mean that such a "special assignment" results in reference of a matter to a specifically named magistrate judge, so that the matter cannot be heard by a different magistrate judge if the parties have not consented to that second magistrate judge. See, Mendes Junior Int'l Co. v. M/V Sokai Maru, 978 F.2d 920, 924 (5th Cir. 1992)(Different magistrate judge lacks jurisdiction to hear matter specifically referred to a different magistrate).

Furthermore, when a Magistrate Judge presides over a civil matter without proper consent and reference by the district court, the error is not harmless. See, Thomas v. Whitworth, 136 F.3d 756, 759 (11th Cir. 1998).

In the case at bar, the only purported consent to reference to a magistrate judge occurred on June 19, 1997, and it was expressly consent to a specific magistrate judge, the Honorable John B. Tolle.[3] Similarly, the order of District Judge Sanders expressly identified that the reference had been made to Magistrate Judge Tolle. [Exhibit C.] There was never any consent to have the matter heard by Magistrate Judge Stickney, nor was there any "special assignment" to Magistrate Judge Stickney as required to confer him jurisdiction to hear the

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3/ The issue of whether there was actually consent to a referral to Magistrate Judge Tolle is not being raised with this Court. The issue being raised is whether a different magistrate, i.e., Magistrate Judge Tolle, to whom the parties have not consented to a reference, and to whom the matter has not been specially referred by a district judge, may simply take over a case when one of the parties objects.

matter. Moreover, because petitioners expressly objected to the matter being heard by Magistrate Judge Stickney, it is not harmless.[4] That being the case, the Fifth Circuit clearly should have vacated the orders of Magistrate Judge Stickney and remanded with directions that the matter be handled by a district judge.

Petitioners urge this Honorable Court to avoid any further misunderstandings of the term "specially assigned" contained in the Magistrate's Act by granting certiorari to make it clear that consent to a specific, named, magistrate judge is consent only to that specific magistrate judge, and not consent to any magistrate judge.

4/ Even counsel for Allstate asked Magistrate Judge Stickney to make any ruling in the form of a recommendation "to avoid rearguing this very same issue as to whatever ruling you are to make..." and because "Mr. Scotti has also put that in his moving papers, challenging the authority of you to even hold this evidentiary hearing." [Statement of attorney Sim Israeloff, on page 45 of the transcript of the proceedings on February 25, 1999]

V

CONCLUSION

Petitioner Rapoport has been denied his right to have his post-judgment motion adjudicated by an Article III judge. Petitioner Scotti has been severely sanctioned for strenuously objecting to the jurisdiction of a magistrate judge to whom the parties had not consented to special referral, and to whom the matter had never been referred, as required by 28 U.S.C. § 636(c).

For the foregoing reasons, petitioner prays that this Honorable Court exercise its supervisorial powers pursuant to Rule 10(a), Supreme Court Rules, and grant the petition for certiorari.

Respectfully submitted,

GERALD V. SCOTTI
Attorney for Petitioners
MICHAEL RAPOPORT and
GERALD V. SCOTTI

APPENDIX TO PETITION FOR CERTIORARI

EXHIBIT A - Order Dismissing Appeal issued by the Fifth Circuit dated September 12, 2000

EXHIBIT B - Order Denying Motion to Vacate and Imposing Sanctions issued by United States Magistrate Judge Stickney on May 18, 1999.

EXHIBIT C - Order Specially Referring the Case to United States Magistrate Judge Tolle on June 17, 1997.

EXHIBIT D - Notice of Appeal filed by Petitioners on June 15, 1999.

EXHIBIT A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 99-10697

UNITED STATES OF AMERICA,

Plaintiff

v.

FILED
SEP. 12 2000

$263,137 IN UNITED STATE CURRENCY

Defendant

MICHAEL RAPPORT, ET AL

Claimants

MICHAEL RAPOPORT

Claimant - Appellant

and

GERALD V. SCOTTI

Appellant

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; FARMERS INSURANCE COMPANY; ALLSTATE INSURANCE COMPANY

Claimants - Appellees

Appeal from the United States District Court for the Northern District of Texas, Dallas

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Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges

BY THE COURT:

IT IS ORDERED that the motion of appellees, State Farm Mutual Automobile Insurance Company and Farmers Insurance Group to dismiss the appeal is GRANTED

IT IS FURTHER ORDERED that the motion of appellees, State Farm Mutual Automobile Insurance Company and Farmers Insurance Group for sanctions against appellant, Michael Rapoport and his attorney Gerald Vincent Scotti is DENIED

MOT-14

EXHIBIT B

FILED
MAY 18 1999

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
	§	
vs.	§	**Civil Action No.**
	§	**3:95-CV-3247-BF**
$263,137.00 IN UNITED STATES CURRENCY,	§	
Defendant,	§	
In Rem,	§	
	§	
	§	
MICHAEL RAPOPORT,	§	
Claimant.	§	
	§	

ORDER

Before this Court are the following three motions and responses and replies thereto:

(1) ***Rapoport's Motion to Vacate Judgment*****, filed January 12, 1999;**

(2) ***Allstate's Supplemental Motion for Sanctions***, filed March 8, 1999;

(3) ***Rapoport's Motion for Attorney's Fees Incurred in Filing Opposition to Motion for Sanctions***, filed March 31, 1999.(sic)

(4) *Farmers Insurance Group and State Farm Insurance Group's Response to Rapoport's Motion to Vacate*, filed January 28, 1999;

(5) *Allstate Insurance Company's Response to Rapoport's Motion to Vacate*, filed January 29, 1999;

(6) *Allstate Insurance Company's Supplemental Response in Opposition to Rapoport's Motion to Vacate*, filed February 16, 1999;

(7) *Rapoport's Reply to Responses*, filed February 18, 1999;

(8) *Allstate Insurance Company's Second Supplemental Response in Opposition to Rapoport's Motion to Vacate Judgment*, filed February 24, 1999; and,

(9) *Rapoport's Response to Allstate's Supplemental Motion for Sanctions*, filed March 31, 1999.

A hearing was held before Magistrate Stickney on February 25, 1999 regarding *Rapoport's Motion to Vacate Judgment*. No hearing was held regarding *Allstate's Supplemental Motion for*

Sanctions or *Rapoport's Motion for Attorney's Fees Incurred in Filing Opposition to Motion for Sanctions*. Based upon the aforesaid arguments, this Court finds as follows.

I.

Claimant Michael Rapoport filed a motion to vacate the judgment entered by this Court pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, alleging that Magistrate Judge John Tolle did not have consent jurisdiction to enter orders on January 9, 1998 and February 3, 1998, which denied, in effect, Rapoport's claims. Magistrate Judge Paul D. Stickney, entered an order on March 13, 1998, denying Rapoport's request for consideration. To support his Motion to Vacate, Rapoport now argues that the Joint Status Report filed with the Court on June 19, 1997, does not include the written consent of James A. Rolfe, counsel for claimant Rapoport.

Pursuant to Rule 60(b), a Court may relieve a party from a final judgment for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence by which due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud, ... misrepresentation, or other misconduct of an adverse party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
> (6) any other reason justifying release from the operation of judgment.

FED. RULES OF CIV. PROC. 60 (b) (West 1999). This Court finds that none of the six reasons, including the catch all provision, warrant vacation of judgment. Rapoport proceeded before Magistrate Tolle without objection. Although he claims it was much later before he discovered that the signature of James Rolfe was missing from the Court's files, he could have sought that information at any time. Rapoport's alleged "new awareness" of the missing page in the Court file could have been discovered by due diligence and arguably would have been

discovered had Rapoport even had reservations about proceeding before the Magistrate. Furthermore, Rule 60(b) requires that the motion shall be made within a reasonable time, but no later than a year after judgment was entered for reasons in Rule 60(b)(1), (2), and (3). Here, Rapoport filed his Motion to Vacate on January 12, 1999, over one year after judgment was entered on January 9, 1998. Thus this Court finds the timing of the filing of this Motion unreasonable.

Moreover, despite the missing signature page in the clerk's file, evidence overwhelmingly indicates that Rapoport's attorney, James A. Rolfe, signed the consent form to proceed before a Magistrate and subsequently even directed various requests for relief to the Magistrate without objection. First, on June 19, 1997, The Honorable Barefoot Sanders assigned the case to Magistrate Judge Tolle pursuant to 28 U.S.C. § 636© after carefully reviewing and deciding that the parties had all consented to proceed before a Magistrate. Furthermore, John

Farish, the attorney responsible for the handling of the Joint Status Report, states by affidavit that Rolfe indeed signed the Joint Status Report and that his signature was filed with the Court. In fact, Farish has in his possession, and has submitted to the Court, a filed marked copy of the Joint Status Report which includes the signature of James A. Rolfe. There is also an affidavit of Alec Stevenson, Assistant U.S. Attorney, who states that he remembers Rolfe agreeing to proceed before a Magistrate. Moreover, Rolfe was subpoenaed to attend the hearing and at such, verified that the signature on Farish's copy of the Joint Status Report was his. Rapoport argues that Rolfe does not remember signing the consent form, however, Rolfe continued the proceedings before Magistrate Tolle without any objection. As noted at the conclusion of the hearing, this Court finds that this matter was properly consented to by Rolfe, on behalf of Rapoport, and the judgment will not be vacated.

II.

Having found that the judgment will not be vacated, this Court next turns to the issue of whether attorney's fees are warranted for Allstate Insurance. Pursuant to 28 U.S.C. § 1927, the Court may award attorney's fees upon a finding that the action is unreasonable and vexatious. 28 U.S.C. § 1927 (West 1994); *Edwards v. General Motors Corp.*, 153 F.2d 242, 245 (5th Cir. 1998); *Travelers Ins. Co. v. St. Jude Hosp.*, 38 F.3d 1414, 1416-17 (5th Cir. 1994). This finding can be satisfied upon evidence of improper motive, bad faith, or reckless disregard of the duty owed to the court. *Edwards*, 153 F.3d at 244. Here, this Court finds that Rapoport's counsel, Gerald V. Scotti, is only bringing this Rule 60(b) Motion to re-preserve and to retry the appeal, a clearly improper purpose. On December 4, 1998, the Fifth Circuit Court of Appeals denied *Rapoport's Motion to File Brief out of Time* and dismissed Rapoport's appeal. Rapoport filed a *Motion for Reconsideration* which was denied on January 25, 1999. While

the *Motion for Reconsideration* was pending, Rapoport filed the *Motion to Vacate* in this Court. Because the instant Rule 60(b) Motion is being brought only to gain an (sic) second chance at appeal before the Fifth Circuit, this Court finds that attorney's fees are warranted. *See also supra,* Section I., for additional reasons why the Rule 60(b) Motion is improper.

Case law supports the aware of attorney's fees for Allstate Insurance. In *Travelers*, a similar care, the Fifth Circuit upheld the imposition of sanctions under § 1927 for the filing of a Rule 60(b)(6) Motion. The movant in *Travelers* sought to void the judgment on the ground that the district judge failed to disqualify himself from the case. Despite the movant's knowledge that the district court's judge's impartiality could have been questioned much sooner, the Rule 60(b)(6) motion was not filed until more than a year after judgment was entered. *Travelers*, 38 F.3d at 1415. In that case, the district court imposed § 1927 sanctions upon concluding that the Rule

60(b)(^) motion was not based upon "newly discovered" information and was designed to malign the integrity of the court. *Id.*, at 1417 n.6. Likewise in the instant case, Scotti was made aware from the pleadings of Allstate, State Farm, and Farmers, that they had a file-marked copy of the Joint Status Report containing Rolfe's signature. The Joint Status Report was filed June 19, 1997. Rapoport, however, did not first complain that he failed to consent to proceed before the Magistrate until April 9, 1998, almost ten months later.

III.

Accordingly, this Court grants an award of attorney's fees to Allstate Insurance to be individually paid by Rapoport's attorney, Gerald V. Scotti. This Court noted that Scotti had a reasonable time to respond to the Motion for Sanctions, and in fact did respond to said Motion. Therefore, based on the foregoing, it is

ORDERED that ***Rapoport's Motion to Vacate***

Judgment, filed January 12, 1999, is **DENIED**. It is

ORDERED that ***Allstate's Supplemental Motion for Sanctions***, filed March 8, 1999, is **GRANTED**. It is

ORDERED that Rapoport's attorney, Gerald V. Scotti, is liable for attorney's fees of Allstate Insurance Company, incurred as a result of Rapoport's filing and pursuit of an improper Rule 60(b) Motion and in preparation of *Allstate's Supplemental Motion and Brief for Sanctions* in the amount of **$75,66 (seven thousand five hundred and sixty-six dollars and no cents)**. Therefore, it is necessarily

FURTHER ORDERED that ***Rapoport's Motion for Attorney's Fees Incurred in Filing Opposition to Motion for Sanctions***, filed March 31, 1999, is **DENIED**.

SO ORDERED this 18 day of May, 1999.

signed
PAUL D. STICKNEY
United States Magistrate Judge

EXHIBIT C

FILED
JUN 15 1999

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, Plaintiff,	§	
vs.	§	Civil Action No. 3:95-CV-3247-BF
$263,137.00 IN UNITED STATES CURRENCY, Defendant,	§	
MICHAEL RAPOPORT, Claimant.	§	

NOTICE OF APPEAL

Claimant MICHAEL RAPOPORT, by and through his counsel of record, GERALD V. SCOTTI, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the

orders denying motions and imposing sanctions entered by the clerk of the court on May 18, 1999.

Attorney Scotti also appeals from the order imposing sanctions.

A copy of the order is attached hereto.

DATED: June 14, 1999

Respectfully submitted,

signed

GERALD V. SCOTTI
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Attorney for Claimant
MICHAEL RAPOPORT

///

///

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EXHIBIT D

FILED
JUN 17 1997

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	*	
	*	
Plaintiff	*	
	*	
v.	*	**Civil No. 3:96-3247-H**
	*	
$263,137 in U.S. Currency	*	
	*	
Defendant In Rem.	*	

ORDER

On June 19, 1997, the remaining parties filed their Joint Status Report, as required by the Court's May 30, 1997 Order. It appears from such Status Report that the parties have consented in writing to trial in this case before a United States Magistrate Judge in accordance with 28 U.S.C. § 636(c).

It is therefore ORDERED by the Court that this case be, and it is hereby, REASSIGNED to United States Magistrate Judge John B. Tolle for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c), with any appeal therefrom to be taken to the United States Court of Appeals for the Fifth Circuit in accordance with 28 U.S.C. § 636(c)(3).

SO ORDERED

DATED: June 19, 1997

signed

BAREFOOT SANDERS, Senior Judge
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS